

**United States Department of Labor  
Employees' Compensation Appeals Board**

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A.S., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Isabela, PR, Employer

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**Docket No. 10-757**  
**Issued: November 17, 2010**

*Appearances:*

*Anixa Montalvo Rivera, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 27, 2010 appellant filed a timely appeal from a November 12, 2009 decision of the Office of Workers' Compensation Programs that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that his right shoulder condition was caused or aggravated by factors of his federal employment.

On appeal appellant's attorney asserts that the medical evidence of record is sufficient to establish causal relationship.

**FACTUAL HISTORY**

On March 11, 2009 appellant, then a 56-year-old letter carrier, filed an occupational disease claim alleging that opening and closing a defective door on his postal vehicle caused a

right shoulder injury.<sup>1</sup> In a January 12, 2009 report, Dr. Mari S. Tofani Montalvo, a Board-certified internist, noted that appellant was seen for a preoperative evaluation for right shoulder surgery. She advised that he could proceed with the procedure. On January 15, 2009 appellant underwent a rotator cuff repair with subacromial decompression.

By letter dated March 25, 2009, the Office informed appellant of the evidence needed to support his claim. It requested a comprehensive medical report that provided an opinion on the cause of his claimed condition. In an April 23, 2009 statement, appellant noted that he had worked at the employing establishment for 24 years. He described his job duties and stated that the door of his postal vehicle was defective and did not slide properly from 2003 to 2008. Appellant submitted treatment notes from Dr. Jose R. Alvarez Montes dated November 27, 1994 to December 16, 2008. A February 4, 2008 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated tendinopathy and partial tear of the supraspinatus tendon and degenerative changes at the insertion and acromioclavicular joint. In progress notes dated February 13 to August 27, 2008, Dr. Armando Nazario Guirau, Board-certified in orthopedic surgery, noted the right shoulder MRI scan findings and appellant's complaint of pain. He diagnosed right shoulder partial tear versus tendinitis. On October 24, 2008 Dr. Ivan H. Pacheco, a Board-certified orthopedic surgeon, reported appellant's complaint of right shoulder pain and weakness. He reviewed the MRI scan; provided examination findings; diagnosed shoulder pain, acromioclavicular arthrosis and complete rupture of rotator cuff; and recommended surgical repair. Dr. Pacheco noted that on January 15, 2009 appellant underwent arthroscopic superior labral tear repair from anterior to posterior (SLAP repair), with subacromial decompression and distal clavicle resection and described his postoperative course. Dr. Roberto H. Hau Rosa, a general practitioner, provided reports dated March 27 and April 17, 2009 which described physical examination findings including right shoulder range of motion measurements. He advised that appellant had 23 percent right shoulder impairment. On March 30, 2009 Dr. Raul Benitez, a psychiatrist, provided results of testing and evaluation.

In a March 25, 2009 letter, Magali I. Rosario, customer service supervisor, controverted the claim. He stated that appellant did not report any problems with his postal vehicle until March 2008, at which time it was sent for repair. A vehicle repair slip for vehicle number 203928 stated that the driver had difficulty sliding the right door, causing arm discomfort.

By decision dated June 16, 2009, the Office denied the claim. It accepted as factual that appellant performed letter carrier duties of pushing, pulling, sorting, casing and delivering mail and opening and closing a postal vehicle sliding door. The Office found that the medical evidence did not establish that the claimed shoulder condition was caused by these employment factors, as it did not explain how his right shoulder symptomology or the January 15, 2009 surgery were causally related to factors of employment.

On June 27, 2009 appellant requested a hearing, later changed to a request for a review of the written record. He submitted vehicle repair slips dated January 5 and March 12, 2008 describing problems with the sliding door. In a July 1, 2009 report, Dr. Pacheco noted appellant's report that work tasks of box and package mobilization, lifting, pushing and overhead

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<sup>1</sup> Appellant also submitted a traumatic injury claim, alleging that a right shoulder injury occurred from January 2008 to January 2009. The claim was adjudicated by the Office as an occupational disease.

reaching caused his right shoulder problems. He reviewed appellant's care, including the January 15, 2009 surgery, and advised that appellant currently had residual stiffness that had plateaued and limited his functional range of motion. Dr. Pacheco diagnosed adhesive capsulitis, rotator cuff syndrome, impingement syndrome, acromioclavicular arthrosis, and biceps tenosynovitis and advised that appellant could not perform many of his work activities such as filing, sorting above head level, pushing and pulling boxes, and closing the truck sliding door. Appellant was approved for retirement disability on September 16, 2009.

On November 12, 2009 an Office hearing representative affirmed the June 16, 2009 decision, finding that the medical evidence did not provide a sufficient opinion regarding the cause of appellant's right shoulder condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>3</sup>

Office regulations define the term "occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift."<sup>4</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>4</sup> 20 C.F.R. § 10.5(ee).

<sup>5</sup> *Roy L. Humphrey*, *supra* note 3.

<sup>6</sup> *D.G.*, 59 ECAB 455 (2008).

is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

### ANALYSIS

The record establishes that appellant's duties included pushing, pulling, sorting, casing and delivering mail, and opening and closing the sliding door on a postal vehicle. The Board, however, finds that the medical evidence of record does not establish that he sustained a right shoulder condition caused or aggravated by these employment factors.

Appellant submitted medical reports including a February 4, 2008 MRI scan of the right shoulder that demonstrated a partial supraspinatus tendon tear. The study does not address any cause of the diagnosed conditions. It is well established that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> In progress notes dated February 13 to August 27, 2008, Dr. Nazario Guirau reviewed the dispositive studies and provided a provisional diagnosis of a right shoulder partial tear versus tendinitis. He too did not address the cause of either condition. Dr. Hau Rosa provided examination and impairment findings. Dr. Pacheco, who performed appellant's right shoulder arthroscopic surgery, noted that appellant attributed his right shoulder problems to his work duties; but the physician did not provide any opinion on causal relationship.

Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>10</sup> There is no such opinion in this case.

In its March 25, 2009 letter, the Office advised appellant to submit a comprehensive medical report that included an opinion on the cause of his claimed condition. In the June 16, 2009 decision, it found that the medical evidence of record was insufficient because it did not include an opinion as to how his right shoulder condition or surgery was caused or contributed to by employment factors. As appellant submitted insufficient medical evidence in support of his

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<sup>7</sup> *Id.*

<sup>8</sup> *Roy L. Humphrey, supra* note 3.

<sup>9</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>10</sup> *J.J.*, 60 ECAB \_\_\_\_ (Docket No. 09-27, issued February 10, 2009).

claim, he did not establish that the claimed right shoulder condition was caused by the accepted employment factors.<sup>11</sup>

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a right shoulder condition due to his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 17, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> The Board notes that appellant also claimed a consequential emotional condition. As the underlying claim for a shoulder condition is denied, the question of whether he sustained a consequential emotional condition is moot.